P & K CO., LTD.

IBLA 96-58, IBLA 96-229 Decided April 10, 1996

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, requiring an increase in bond for coal lease OKNM-91190 and directing the posting of the proper bond within 30 days.

Petitions for stay denied; decisions affirmed.

1. Coal Leases and Permits: Generally--Coal Leases and Permits: Bonds

Consistent with 43 CFR 3474.2(a), BLM has authority to increase the bond for a coal lease on Federal lands when a change in coverage is considered appropriate due to changes in production from the lease.

APPEARANCES: Thomas H. Stringer, Jr., Esq., Henryetta, Oklahoma, for P & K Co., Ltd.; Arthur Arguedas, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

P & K Company, Limited (P & K) has appealed from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated October 5, 1995, and February 13, 1996. The October 5 decision increased the bond required for P & K's coal lease OKNM-91190 (lease), and the February 13 decision was a notice requiring P & K to post the bond ordered by BLM's October 5 decision within 30 days of receipt of the notice.

The lease was issued to P & K effective July 1, 1995. At that time, a bond in the amount of $11,000 was posted to cover the annual rental of $10,290. The record indicates that P & K anticipated that actual production of the underground coal reserves would begin in September 1995. Accordingly, a bond review for the lease was conducted by BLM supervisory geologist Gary Stuckey, who recommended in a memorandum dated September 28, 1995, that the lease bond be increased to $36,000. In his memorandum, Stuckey stated that the bond readjustment was determined in accordance with BLM Management Manual Part 3474, Bonds, as amended, and explained that, based upon production estimates of 15,000 tons per month, the value of 3 months' royalty was calculated to be $25,200. By adding the estimated royalty to the rental sum and rounding off that total, he determined that a new bond in the amount of $36,000 was appropriate for the lease. By decision dated October 5, 1995, BLM notified P & K that its bond obligation

for the subject lease had been readjusted to $36,000. P & K timely filed a notice of appeal and statement of reasons, and later filed a petition for stay on March 18, 1996. This appeal has been docketed as IBLA 96-58.

By notice dated February 13, 1996, BLM advised P & K that because no timely request for stay of BLM's October 5 decision was filed under 43 CFR 4.21(a)(2), P & K was "directed and required" to post the bond ordered by BLM's October 5 decision within 30 days of receipt of the notice. BLM further advised that "failure to correct this default of the lease terms and conditions will result in further action against the lease." P & K filed a notice of appeal, statement of reasons, and petition for stay. This second appeal has been docketed as IBLA 96-229.

Because the appeals involve similar issues, IBLA 96-58 and IBLA 96-229 are consolidated for review.

To be entitled to a stay, appellant must demonstrate, inter alia, that there is a likelihood it will succeed on the merits of the appeal. 43 CFR 4.21(b)(1)(ii). Our review of the merits of this appeal establishes not only that P & K has failed to demonstrate a likelihood of success on the merits, but that the decisions appealed must be affirmed. In situations such as this, we have held that no purpose would be served by delaying the final disposition of the appeal. See Texaco Trading & Transportation Inc., 128 IBLA 239, 241 (1994). Accordingly, we deny the petitions for stay as moot and affirm BLM's decisions.

In its statements of reasons for appeal of BLM's decisions, P & K argues that neither BLM nor the BLM officials rendering the appealed decisions have authority to increase an already-posted coal lease bond. P & K asserts that the decisions were reached without its input, and are arbitrary, a denial of due process, and constitute a taking of its property. P & K also requests that it be granted a hearing on its appeals.

BLM's answer to P & K's statement of reasons for appeal of BLM's October 5 decision denies all allegations by P & K, asserting that the person who issued the decision appealed was authorized to do so, and that the actions taken by BLM were authorized by 43 CFR 3474.2(a), section 3 of the lease, and BLM Manual Release 3-194 dated February 18, 1988. BLM asks that the Board dismiss the appeal summarily, or decide it on the existing record without a hearing. BLM also filed responses to P&K's petitions for stay and its appeal of the February 13, 1996, notice.

[1] Neither statute nor Departmental regulations provide a specific formula for establishing the amount of a bond for a coal lease. United States Fuel Co., 109 IBLA 398, 400 (1989); 43 CFR Subpart 3474. However, a lease bond is generally intended to assure the performance of certain obligations which arise under a lease. See 43 CFR 3400.0-5(s); Utah Power and Light Co., 118 IBLA 181, 203, 98 I.D. 97, 109 (1991). Nonetheless, 43 CFR 3474.2(a) requires the bond amount to be adequate to assure "compliance with all terms and conditions of the lease" except reclamation.

In order to fulfill that objective, the Department has over the years promulgated various guidelines for establishing bond amounts. See United States Fuel Co., supra; Coastal States Energy Co., 81 IBLA 171, 175 (1984).

Section 3 of the lease at issue provides: "Lessee shall maintain in the proper office a lease bond in the amount of $11,000." That same section also authorizes future increases: "The authorized officer may require an increase in this amount when additional coverage is determined appropriate." Regulation 43 CFR 3474.2(a) also provides that it is the "authorized officer" who is responsible for determining the appropriate bond amount; the "authorized officer" for determination of bonding requirements is the BLM official delegated that responsibility. 43 CFR 3400.0-5(b). P & K has submitted no evidence showing that BLM or the BLM officials rendering the appealed decisions were without authority to do so.

At the time of BLM's determination that the bond amount should be increased, its method of calculating the appropriate bond amount was governed by the BLM Manual, Section 3474. BLM attributes the increase in bonding requirements for the lease to the fact that it is newly producing. Appellant does not deny that fact. The BLM Manual provides in section 3474, Appendix 1 (Release 3-194, Feb. 18, 1988), on page 2, that, in the case of producing leases: "For royalty payments made monthly, the amount of bond shall be sufficient to cover 3 months of estimated royalty, plus 1 year's rent rounded up to the next even $1,000." This is the formula BLM employed in the instant situation.

The burden to establish error in the bonding process rests with appellant. United States Fuel Co., supra at 402; Dallas Oil Co., 93 IBLA 218, 220 (1986). So long as production from the subject coal lease continues, BLM is obliged to require a bond adequate to ensure that the United States receives accrued production royalties should the lessee fail to make the required payments. Appellant has provided no evidence that the amount stipulated by BLM is more than required under the described facts.

Finally, P & K requests a hearing, and argues that the decisions appealed constitute a denial of due process. Departmental regulations do not guarantee every recipient of an adverse BLM decision the right to a hearing. See Alfred G. Hoyl, 127 IBLA 297, 303-04 (1993). Instead, hearings are required only when a question of fact is presented that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal. 43 CFR 4.415; see Pine Grove Farms, 126 IBLA 269, 275 (1993), and cases cited. Further, P & K's due process rights are protected by its right to seek review before this Board, which has the authority and capacity to review and decide questions of law and fact independently and objectively. Wayne D. Klump v. BLM, 124 IBLA 200, 203 (1992); Davis Exploration, 112 IBLA 254 (1989). As we find no issue of fact present in P & K's appeals, we conclude that a hearing is not necessary and that due process has been satisfied.

To the extent P & K has raised arguments which we have not specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petitions for stay are denied as moot, and BLM's decisions of October 5, 1995, and February 13, 1996, are affirmed.

John H. Kelly
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge